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10/038,818

12/31/2001

Robert L. Popp

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321 7590 03/20/2007
SENNIGER POWERS
ONE METROPOLITAN SQUARE
16TH FLOOR
ST LOUIS, MO 63102

EXAMINER

REICHLE, KARIN M

ART UNIT

PAPER NUMBER

3761

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/038,818
Filing Date: December 31, 2001
Appellant(s): POPP ET AL.

Richard L. Bridge
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 11-14-06 appealing from the Office action mailed 7-21-05.

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(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The following are the related appeals, interferences, and judicial proceedings known to the examiner which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal:

According to a statement by the same real party in interest as set forth supra filed in 10/038,796, the appeal in the instant application is related to the appeals in 10/038,796 and 10/159,076.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

GROUND OF REJECTION NOT ON REVIEW

The following grounds of rejection have not been withdrawn by the examiner, but they are not under review on appeal because they have not been presented for review in the

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appellant's brief. 1) The rejection of claims 3 and 20 under 35 USC 102(b) as anticipated by or, in the alternative, under 35 USC 103(a) as obvious over Hetzler et al '136.

2) The rejection of claims 3 and 20-23 under 35 USC 103(a) as being unpatentable over Hetzler '136 in view of Robertson '140 or Morman et al '028, and thereby Morman '781 and '662, in view of Hetzler '136 and Robertson '140.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,910,136	HETZLER et al.	6-1999
5,883,028	MORMAN et al.	3-1999
5,114,781	MORMAN	5-1992
5,116,662	MORMAN	5-1992

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Language Interpretation

"Neck-stretched" is defined as set forth on page 9, lines 1-3. The terminology "attached" is interpreted in view of the definition bridging pages 5-6, i.e. could be direct or indirect attachment. With regard to the claims, it is noted that it is not claimed how the component is mounted on the article or how stretchable the loop component is, i.e. the specific amount of limited movement, relative to the hook component after such mounting

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Ground A.:

Claims 19 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Hetzler '136.

See definitions *supra*, col. 10, line 65-col. 12, line 2 and Figure 3, i.e. teaches a mechanical fastening system 88 for an article 80 with a loop fastening component and a hook component, see elements 10 and 30 in Figure 2, col. 7, lines 20-36, col. 9, lines 54-56, col. 8, lines 34-39 and col. 9, lines 1-3 and 26-36, i.e. the loop component is a neck stretched, i.e. prestrained, nonwoven material directly attached to an elastic substrate and the component and elastic are capable of stretching in multiple directions, i.e. the CD and MD directions. The whereby clause recites properties, functions or capabilities of the claimed structure. As discussed *supra*, the '136 reference includes all the claimed structure. Therefore there is sufficient factual evidence for one to conclude that the claimed properties, functions and capabilities would also be inherent in the same structure of the '136 device. See MPEP 2112.01. With regard to the specific stretching capability limitations of claim 19 and claim 25, see again col. 7, lines 20-36, i.e. at least about 150 percent, i.e. at least about 2.5 times a relaxed length. It is noted that lines 22-27 discuss the stretched biased length to the relaxed unbiased length, i.e. at least about 150%, whereas lines 31-36 discuss the stretch with regard to a percentage of the relaxed length, e.g. 100% or more, i.e. in other words, the stretched biased length to the unbiased length is 2.0 times or more. Attention is also invited to the paragraphs bridging pages 31-32 and 35-36 and page 36, line 20-page 37, line 13 of the instant application.

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Ground B:

Claims 19 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morman et al '028, and thereby Morman '781 and '662, in view of Hetzler '136.

With regard to claims 19 and 25, see col. 1, lines 5-7, col. 2, lines 6-8, and 10-13, col. 4, lines 11-13, col. 8, lines 27-35, col. 9, lines 58-66 and col. 11, line 65-col.12, line 16, of '028 and thereby Morman '662 at col. 11, line 40-col. 12, line 34 and Morman '781 at col. 13, line 41- col. 14, line 61 (compare to page 29, lines 28-30, page 32, lines 7-15 and page 36, line 20-page 37, line 25 of the instant specification), i.e. a neck stretched or prestrained material 12 is directly attached to an elastic substrate which is stretchable in two directions to form a laminate which is capable of elastic stretch in two directions and the material 12 is necked in the cross direction of the laminate and is attached to the elastic substrate as claimed in claim 3. The laminate so formed can be used as a breathable elastic film and nonwoven laminate outer cover of a diaper. With regard to the specific stretching capability limitations of claim 19 and claim 25, see, e.g., col. 2, lines 58-63, i.e. at least about 160 percent, i.e. at least 2.5 times the relaxed length. Therefore, the Morman '028 device includes all the claimed structure except for such laminate being used as a loop component of a mechanical fastening system for an article which system also includes a hook component. However, Hetzler '136 also teaches a breathable, elastic film and nonwoven laminate can not only be used as the outer cover of a diaper but also as a loop component of a hook and loop mechanical fastener system in a diaper, see col. 10, line 65-col. 12, line 2 as well as the other portions of the '136 reference cited supra. To use the breathable, elastic film and nonwoven laminate of Morman '028, and thereby '662 and '718, to not only to form the outer cover but also form a loop component of a mechanical fastening system would be

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obvious to one of ordinary skill in the art in view of the interchangeability as taught by Hetzler, e.g. col. 10, line 65-col. 12, line 2, i.e. outer cover laminate/loop type fastener combination interchangeable with outer cover laminate which also serves as the loop fastener. With regard to the whereby clauses of claim 19, if not already taught by the prior art combination, the prior art combination would necessarily and inevitably possess the same functions, capabilities and properties because it includes the same materials processed in the same manner as the claimed invention, see cited portions of references and the instant application supra.

(10) Response to Argument

Ground A.:

Claim 19:

Appellant's discussion of claim 19 on pages 3-5 is noted. Attention is directed to claim 19 in the Appendix and the Claim Language Interpretation section supra.

The remainder of Appellant's arguments on pages have been considered but are deemed not persuasive. Attention is also directed to page 12, lines 11 -12 of the Brief. Specifically, Appellant's argue Hetzler fails to show or suggest 1) a mechanical fastening system including a loop component that is mountable on an article, 2) capable of elastic stretching in at least two directions, 3) elastically stretchable to at least 2.0 times a relaxed length in at least one of the directions, and 4) constructed of a neck-stretched non-woven material attached directly to an elastic substrate. However the portions of the Hetzler reference cited supra, see Section (9), Ground A., i.e. 1) col. 10, line 65-col. 12, line 2, 2) col. 9, lines 26-27, i.e. both CD and MD, 3) col. 7, lines 20-36, note especially "at least" and "or more", and 4) col. 8, lines 34-39, col. 9,

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lines 1-3 and 54-55, teach the claimed features. Further attention is also directed to Table II, e.g. samples A and H, Peak Elongation %, and col. 13, lines 28-35. Therefore, Appellant's arguments are deemed narrower than the teachings of the prior art to Hetzler.

Claim 25:

See again, e.g., col. 7, lines 20-36 and the discussion of the arguments with respect to claim 19 supra.

The rejection of claims 19 and 25 is deemed proper and maintained.

Ground B:

Claim 19:

Appellant's remarks on pages 10-13 of the Brief have been considered but are deemed not persuasive. Specifically, Appellant argues that it would not be obvious in view of Hetzler to use the laminate of Morman as a loop component because neither Morman or Hetzler 1) have anything to do with mechanical fastening systems, see page 11, second full paragraph of the Brief, nor 2) teach a loop component that is able to elastically stretch 2.0 times its relaxed length. First it is noted that the argument on page 12, second full paragraph is not only inconsistent with the prior art rejection supra but Appellant's own statement of the Office's position at page 10, lines 13-19 and supra, i.e. the Office's position is not that the loop fastener of Hetzler is replaced with the laminate of Morman. With regard to 1), see not only the discussion of the Hetzler and Morman in Section (9), Ground B. and Section (10), Ground A., supra but also page 12, lines 11-12 of the Brief, i.e. Hetzler explicitly teaches a loop component. (It is noted that the Office's position never alleged that the Morman reference explicitly taught a loop component, i.e. this is

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the reason why the rejection is made under 35 USC 103(a) rather than 35 USC 102(b).) With regard to 2) see not only the discussion of the Hetzler and Morman in Section (9), Ground B. and Section (10), Ground A., but note the language “at least” and “or more” with regard to the portions of the references describing the elastic stretch capability. Therefore Appellant’s arguments are deemed narrower than the teachings of the prior art.

Claim 25:

See again, e.g., the cited portions of Morman ‘028 and the discussion of the arguments with respect to claim 19 supra.

The rejection of claims 19 and 25 are deemed proper and maintained.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner’s answer.

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For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

K. M. Reichle



Conferees:

Tanya Zalukaeva



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